

Premier Professional Liability Insurance



11/11/2021

Mr. Theodore Cooperstein, Esq.
294 Surrey Crossing
Ridgeland, MS 39157

Insured Member: Theodore Cooperstein
Our File Number: FEDSIC-08-240
Our Client: Scottsdale Insurance Company
Policy Number: FGS0000044
Certificate Number: FGS-FE-2024235

Dear Mr. Cooperstein,

As you know, the Federal Employee Defense Services Claims Division is the claims administrator for Scottsdale Insurance Company relative to the above captioned case.

Nationwide, on behalf of Scottsdale Insurance Company, provides Federal Employee Professional Liability coverage to you under master policy number FGS0000044 through a certificate of insurance issued by the Federal Employee Defense Services (FEDS). This certificate of insurance provides the insured member professional liability coverage effective 3/12/2021 through 3/12/2022. The policy provides coverage in the amount of \$1,000,000 per incident for civil suit coverage, \$200,000 for administrative legal defense coverage, and \$100,000 for criminal legal defense coverage. Your effective date of continuous coverage is 3/12/2019.

Scottsdale Insurance Company and the Federal Employee Defense Services Claims Division acknowledge the claim notice documents that your attorney, John P. Sneed, provided to FEDS on November 9, 2021. These documents confirm that the Office of Professional Responsibility (OPR) has informed you that you are the subject of an inquiry that they have commenced regarding your alleged misconduct in connection with *United States v. Miranda-Alcantar*, No. 3:2-0-cr-001551 (S.D. Miss.); *United States vs. Escobar-Castro*, No. 3:19-cr-00097 (S.D. Miss); and *United States v. Bell*, No. 3:19-cr-00031(S.D. Miss.). Specifically, on multiple occasions during your handling of the above cases you made inconsistent representations to District Court Judge Carlton Reeves when he questioned you about your COVID-19 vaccination status. Judge Reeves subsequently issued you three separate show cause orders directing you to explain why you should not be sanctioned for making one or more misrepresentations to the court. OPR has requested that you provide them with a written response addressing your inconsistent representations to the court regarding your COVID-19 vaccination status.

We respectfully inform you that the Scottsdale Insurance Company will not provide you a defense for this investigation. There is no coverage afforded pursuant to the aforementioned policy for the reasons described below.

We refer you to your Federal Employee Professional Liability Master Policy number FGS0000044, form FGS-P-1 (5-19), specifically, **SECTION I- CIVIL SUIT COVERAGE**, wherein it reads, in part:

A. Insuring Agreement and Claims Made Clause

Subject to the Limits of Liability listed in the declarations, and as stated in **SECTION VII – LIMITS OF LIABILITY, A. Civil Suit Coverage**, the Company will pay on behalf of the **INSURED MEMBER** those sums which the **INSURED MEMBER** shall become legally obligated to pay as **DAMAGES** as a result of **CLAIMS** first made against the **INSURED MEMBER** and reported to the Company in writing during the **INSURED MEMBER'S POLICY PERIOD** by reason of any act, error or omission of the **INSURED MEMBER** which constitutes either a common law, statutory or Constitutional tort in the United States of America, and which results from or arises out of the **PROFESSIONAL SERVICES** of the **INSURED MEMBER**, provided always:

1. That such underlying act, error or omission which gave rise to the **CLAIM** occurred after the **EFFECTIVE DATE OF CONTINUOUS COVERAGE** for the **INSURED MEMBER** under this program;

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2. That the **INSURED MEMBER** had no knowledge of the **CLAIM** or suit, or any act, error or omission which might reasonably be expected to result in a **CLAIM** or suit, prior to the **POLICY PERIOD** for the **INSURED MEMBER** under this program; and
3. The **INSURED MEMBER** did not give notice of a **CLAIM** to any prior insurer.

It is a condition precedent to any payment of **DAMAGES** under this clause that:

1. The **INSURED MEMBER** must first request that the United States Federal Government exercise its legal authority to indemnify federal employees and military police officers found personally liable for acts, errors, or omissions occurring within the scope of their federal or military employment, and it is only upon the United States Federal Government's denial of such indemnity request that the civil liability provision(s) shall be invoked under the policy to pay a judgment or settle a **CLAIM** or suit; and
2. All **CLAIMS** be reported in compliance with the **SECTION VIII – CONDITIONS, A. INSURED MEMBERS DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT.**

We now refer you to your Federal Employee Professional Liability Master Policy number FGS0000044, form FGS-P-1 (5-19), specifically **SECTION II- ADMINISTRATIVE AND CRIMINAL LEGAL DEFENSE EXPENSE COVERAGE**, wherein it reads, in part:

A. Insuring Agreement and Claims Made Clause

Subject to the Limits of Liability listed on the Declarations, and as stated in **Section VII – LIMITS OF LIABILITY, C. Administrative and Criminal Legal Defense Expense Coverage**, the Company shall select counsel and pay the costs of defense arising out of any **DISCIPLINARY PROCEEDINGS, JUDICIAL SANCTIONS PROCEEDINGS, CRIMINAL PROCEEDINGS**, or any investigation into the **Insured Member's** alleged misconduct, instituted against the **Insured Member** for any act, error or omission in **Professional Services** rendered or which should have been rendered in the **Insured Member's** professional capacity as a full or part-time Employee of the United States Federal Government or a military police officer in the United States armed services.

With regard to **CRIMINAL PROCEEDINGS**, the Company's obligation to pay for costs of defense shall cease upon a finding, verdict or other final disposition unfavorable to the **INSURED MEMBER** establishing that the act, error or omission was criminal.

The Company has no duty to defend if the **INSURED MEMBER** had prior knowledge of any potential **DISCIPLINARY PROCEEDINGS, JUDICIAL SANCTIONS PROCEEDINGS, OR CRIMINAL PROCEEDINGS** being contemplated or any investigations into the **INSURED MEMBER'S** alleged misconduct or if the **INSURED MEMBER** had prior knowledge of any act, error or omission which might reasonably be expected to result in any such proceeding or investigation prior to the **POLICY PERIOD** for the **INSURED MEMBER** under this program; and/or if the **INSURED MEMBER** gave notice of the allegation or **CLAIM** to any prior insurer.

We again refer you to your Federal Employee Professional Liability Master Policy number FGS0000044, form FGS-P-1 (5-19), specifically **SECTION IV- DEFINITIONS**, wherein it reads, in part:

- D. **CRIMINAL PROCEEDING** means any proceedings in the United States (Federal or State), including investigations, before any entity, or entities, established by United States (Federal or State) constitutional provision, statute, regulation, or Court rules, to investigate, review or prosecute charges of criminal misconduct.
- F. **DISCIPLINARY PROCEEDING** means any proceeding in the United States (Federal or State), including investigations, before any entity, or entities, established by the United States (Federal or State) constitutional provision, statute, regulation, or court rules, to investigate, review or impose sanctions for charges of professional misconduct.

An investigation of discrimination or retaliation, alleged by individual(s) under any Federal anti-discrimination in employment statute, regulation, or court rules, is a **DISCIPLINARY PROCEEDING** if the allegation has been accepted

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for investigation by any entity of the United States Federal Government, and if the allegation accepted for investigation alleges that the **INSURED MEMBER** may have engaged or participated in an act, error, or omission of discrimination or retaliation against an individual, group, or entity.

DISCIPLINARY PROCEEDING does not include **PERFORMANCE PROCEEDINGS, PHYSICAL AND MEDICAL QUALIFICATION DETERMINATIONS, SUITABILITY DETERMINATION PROCEEDINGS, PROBATIONARY PERIOD REMOVAL(S)/PROCEEDINGS, SECURITY CLEARANCE PROCEEDINGS,** or directed reassignment(s).

J. JUDICIAL SANCTIONS PROCEEDING means any proceeding initiated or held by any adjudicatory body as a result of any act, error or omission in rendering **PROFESSIONAL SERVICES** before or under the authority of said adjudicatory body.

We respectfully inform you that there is no coverage afforded to you for this investigation under your Federal Employee Professional Liability policy because it does not arise from the insured member's act, error or omission in professional services rendered or which should have been rendered in the insured member's professional capacity as a full or part-time employee of the United States Federal Government. Specifically, the allegation that you misrepresented your COVID-19 vaccination status to the court, does not constitute misconduct arising from an act, error or omission in professional services rendered.

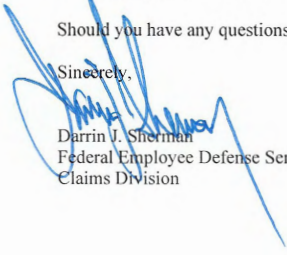
At this time, the Scottsdale Insurance Company will take no further action in this matter.

We suggest that you consult with your personal attorney, at your own expense, for further advice on this matter.

If you learn of further information which you feel may alter our position relative to coverage, please communicate directly with the undersigned and such information will promptly be considered.

Should you have any questions about the content of this letter please contact the undersigned at your convenience.

Sincerely,


Darrin J. Sherman
Federal Employee Defense Services
Claims Division

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